IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2156 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESHAVBHAI KHODIDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MD VAKIL for Petitioner

Mr.S.J. Dave, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 17/04/2000

ORAL JUDGEMENT

1. Rule. Learned Assistant Government Pleader, Mr.

S.J. Dave, waives service of notice of rule on behalf of the respondents. At the request of learned counsel for the parties, this petition is taken up for final hearing today.

2. Petitioner, whose land bearing Survey No.485 of village Gota, Taluka Dascroi, District Ahmedabad, came to be acquired on May 20, 1970 for the public purpose of laying down road for Gandhinagar-Sarkhej Highway, has filed this petition for a direction or a writ in the nature of mandamus to the authorities to pay amount of rent/interest at the prescribed rate at 9% per annum for the first year from the date of taking over possession on May 20, 1970 and, subsequently, at the rate of 15% per annum after expiry of period of one year.

3. It is an admitted fact that possession of acquired land was taken on May 20, 1970 and notification for the same was published on December 27, 1993 and award under Section 11 of the Land Acquisition Act, 1894 ('Act' for short) on December 29, 1995. In the award, which is produced at Annexure "K" to the petition, with regard to payment of interest, in paragraph 18, it has been mentioned that the claimants are entitled to claim interest from the date of taking over possession, i.e. May 20, 1970 till the date of the award and the amount of interest is to be paid by the acquiring body directly to the claimants.

4. Learned Assistant Government Pleader, Mr. S.J. Dave, contended that, as reference under section 18 of the Act filed by the petitioner is already pending, this petition is not maintainable and the amount of interest under Section 34 of the Act can be awarded in the reference application. The contention of learned Assistant Government Pleader for the respondents deserves to be rejected. In the reference application under Section 18 of the Act, the Court will only award of interest under Section 28 of the Act. It would be worthwhile to notice provision of Section 34 of the Act which reads as under:

"34. Payment of interest.- When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited. (Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be

payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.)"

Reading the provisions of Section 34 of the Act, it becomes clear that, when the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum for the first year from the time of so taking possession, and after expiry of one year at the rate of 15% per annum. The Court deciding reference application under Section 18 of the Act will only award interest on the enhanced compensation under Section 28 of the Act.

5. Similar question had arisen before this Court in the case of Mohanbhai Punambhai Patel vs. State of Gujarat, reported in 1999 (2) G.L.H. 331, wherein the Division Bench of this Court has taken view that in cases where compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest. If such amount or any part thereof is not paid or deposited within a period of on year from the date on which possession is taken, interest at the rate of 15 per cent per annum is payable from the date of expiry of the period of one year. Admittedly, in the award, no amount of interest under Section 34 of the Act is paid. Another Division Bench (Coram: M.R. Calla & Pradip Kumar Sarkar, JJ.) has also taken similar view in Special Civil Application No.8612 of 1999.

6. It may be stated that no reply to this petition has been filed and learned Assistant Government Pleader has only orally contested the petition. These were the only submissions made by learned Assistant Government Pleader on behalf of the respondents.

7. As a result of foregoing discussion, this petition succeeds and is allowed. The respondents are directed to pay amount of interest to the claimants, within four months from today, at the rate of 9% per annum for the first year from the date of taking possession i.e May 20, 1970, and after expiry of one year at the rate of 15% per annum, till the payment is made. Rule is made absolute with no order as to costs.

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(swamy)